SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

October Term, 1970
No. 40 Original

COMMONWEALTH OF PENNSYLVANIA,

Plaintiff,

v.

STATE OF NEW YORK, STATE OF FLORIDA, STATE OF OREGON, COMMONWEALTH OF VIRGINIA, and THE WESTERN UNION TELEGRAPH COMPANY,

Defendants.

ANSWER OF THE DEFENDANT, STATE OF NEW YORK

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Defendant
the State of New York

SAMUEL A. HIRSHOWITZ
First Assistant Attorney General

JULIUS GREENFIELD
Assistant Attorney General
of Counsel

249 Press of Fremont Payne, Inc., 417 Canal St., N. Y.—966—6570

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STATE OF NEW YORK, STATE OF FLORIDA, STATE OF OREGON, COMMONWEALTH OF VIRGINIA, and THE WESTERN UNION TELEGRAPH COMPANY,

Defendants.

ANSWER OF THE DEFENDANT, STATE OF NEW YORK

The State of New York, by LOUIS J. LEFKOWITZ, Attorney General, makes answer to the complaint of the Commonwealth of Pennsylvania as follows:

1. Admits the allegations contained in paragraphs 1, 2, 3, and 4 of the said complaint.

2. Admits so much of paragraph 5 of the complaint as alleges that New York is asserting claims adverse to those of the Commonwealth of Pennsylvania but avers that it is without knowledge or information sufficient to form a belief that the other states named as defendants are the only states asserting rights contrary to the claims of Pennsylvania.

3. Is without knowledge or information sufficient to form a belief as to the allegations contained in the second paragraph of paragraph 6 of the complaint and demands proof of such allegations.

4. Admits the allegations of paragraphs 7 and 8 of the complaint.

5. Admits the allegations of paragraph 9 of the complaint but denies that portion of paragraph 9a of the complaint as alleges that Western Union tariffs are on file with tne Interstate Commerce Commission and avers that said tariffs are on file with the Federal Communications Commission.

6. Admits the allegations of paragraphs 10, 11, 12, 13, 14 and 15.

7. Admits so much of paragraph 16 as alleges that the survey therein referred to was made but avers that it lacks knowledge or information sufficient to form a belief as to the accuracy of the survey and the conclusions drawn therefrom by the plaintiff in the said paragraph 16 as well as in paragraph 30.

8. Admits the allegations of paragraph 17.

9. Is without knowledge or information sufficient to form a belief as to the allegations contained in paragraphs 18, 19 and 20. Proof of such averments is demanded.

10. Denies so much of paragraph 21 as alleges that the sum of $100,000 is subject to escheat or custodial taking by Pennsylvania.

11. Admits the allegations of paragraphs 22 and 23.

12. Is without knowledge or information sufficient to form a belief as to the claims and controversies set forth in paragraphs 24, 25 and 26.

13. Denies so much of paragraph 27 as alleges that under the New York Abandoned Property Law, section 1309, New York claims all moneys arising from money orders purchased from Western Union between January 1, 1930 to January 1, 1958 solely by reason of the purchase of the money orders during such period and avers that New York, as the state of corporate domicile of Western Union, the state of central focus of management of Western Union and the situs of the office of the corporate comptroller and the treasurer to whom all surplus funds of the Western Union offices throughout the country are ultimately remitted is entitled to take this abandoned property. For further answer, paragraph 16 hereof, in answer to paragraphs 30, 31 and 32 of the complaint, is herein incorporated by reference.

14. Admits the allegations in paragraph 27 respecting New York's claims to money orders purchased from Western Union on or after January 1, 1958 and denies that Pennsylvania or any state other than New York has any right to any money order moneys where it is not feasible to determine the state of last known address of the creditor or the identity of the creditor from the books of Western Union. Copies of the New York Abandoned Property Law, section 1309, as it existed prior and subsequent to its amendments in 1969 and 1970 are attached hereto and made a part hereof as Exhibits A and B. For further answer, paragraph 16 hereof in answer to paragraphs 30, 31 and 32 of the complaint, is herein incorporated by reference.

15. Admits the allegations of paragraphs 28 and 29.

16. Further answering the allegations contained in paragraphs 30, 31 and 32 of the complaint:

(a) Avers that New York is entitled to take all such abandoned property arising out of money orders purchased from Western Union prior to January 1, 1958.

(b) Avers that New York is entitled to take all such abandoned property arising out of money orders purchased from Western Union on or after January 1, 1958 where: (1) New York is the state of last known address of the purchaser; (2) where the purchaser's last known address cannot be obtained from the records of Western Union; or (3) where the purchaser's last known address is located in a state not having in effect a statute under which such amount is payable to such state as unclaimed, abandoned or escheated property.

(c) Denies that any state other than New York has the right to take abandoned money order monies where it is not feasible to determine the last known address of the creditor from the books of Western Union.

(d) Avers that New York is entitled to take all such abandoned property arising out of money orders purchased from Western Union on or after January 1, 1958, where it is not feasible to determine the identity of the creditor from the books of Western Union.

17. Admits the allegations of paragraphs 33 and 35 and avers that the allegations of paragraph 34 contain conclusions of law to which no answer is required.

WHEREFORE, the State of New York joins in the plaintiff's request that this Court hear and determine the controversies herein, either by referring this case to a Special Master or Federal District Court, to take evidence and make appropriate reports and also prays as follows:

1. That plaintiff's request for the issuance of a temporary injunction against the State of New York be denied since New York has not and does not intend to institute any action until the disposition of this controversy.

2. That judgment be entered determining that the moneys held by Western Union are subject to custodial taking or escheat by the State of New York as follows:

a. New York is entitled to take all the moneys held by Western Union arising out of money orders purchased on or after January 1, 1930 and prior to January 1, 1958.

b. New York is entitled to take all the moneys held by Western Union arising out of money orders purchased on or after January 1, 1958 in the following circumstances:

(1) Where the last known address of the purchaser of the money order as shown on the records of Western Union is located in the state of New York;

(2) Where the last known address of the purchaser of the money order cannot be obtained from the records of Western Union and;

(3) Where the purchaser's last known address is located in a state not having in effect a statute under which such amount is payable to such state as unclaimed, abandoned or escheated property.

(4) Where it is not feasible to determine the identity or the last known address of the creditor from the books of Western Union.

3. That the State of New York be given such other and further relief as this Court may deem proper and appropriate in the circumstances.

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Defendant
The State of New York
80 Centre Street
New York, N. Y. 10013

SAMUEL A. HIRSHOWITZ
First Assistant Attorney General

JULIUS GREENFIELD
Assistant Attorney General
of Counsel

Exhibit A

McKinney's Consolidated Laws
of New York
Annotated
Book 2½

Abandoned Property Law

Sec. 1309

As it existed prior to Amendments by
Laws of 1969, c. 1114 effective
May 26, 1969 and by
Laws of 1970, c. 706 effective
May 12, 1970

§ 1309. Uncashed travelers checks and money orders

1. Any amount held or owing by any organization other than a banking organization for the payment of a travelers check or money order on which such organization is directly liable, sold by such organization on or after January first, nineteen hundred thirty, shall be deemed abandoned property if such amount is held or owing (a) for payment of a travelers check which shall have been outstanding for more than fifteen years from the date of its sale, or (b) for payment of a money order which shall have been outstanding for more than seven years from the date of its sale.

2. On or before the first day of May in each year commencing with the year nineteen hundred forty-nine every such organization holding or owing such abandoned property shall make a verified written report to the state comptroller of all such abandoned property held or owing by it as of the thirty-first day of December next preceding. Such report shall set forth the amount and identify-

ing number of each travelers check and money order for the payment of which such abandoned property is held or owing.

3. On or before the first day of June in each year commencing with the year nineteen hundred forty-nine every such organization shall pay to the state comptroller all abandoned property specified in its report of that year, excepting such abandoned property as shall have ceased to be abandoned since the date as of which such report was prepared. Such payment to the state comptroller shall be accompanied by a statement setting forth such information as the state comptroller may require relative to such abandoned property as shall have ceased to be abandoned.

4. Notwithstanding any other provision of law, the rights of a holder of a travelers check or money order to payment from any such organization shall be in no wise affected, impaired or enlarged by reason of the provisions of this section or by reason of the payment to the state comptroller of abandoned property hereunder, and any such organization which has paid to the state comptroller abandoned property held or owing for the payment of a travelers check or money order shall, upon making payment to the person appearing to its satisfaction to be entitled thereto and upon submitting to the state comptroller proof of such payment and the identifying number of the travelers check or money order so paid, be entitled to claim reimbursement from the state comptroller of the amount so paid, and after audit the state comptroller shall pay the same.

Exhibit B

ABANDONED PROPERTY LAW

Sec. 1309

As Amended by Laws of 1969, c. 1114
effective May 26, 1969 and
Laws of 1970, c. 706
effective May 12, 1970

§ 1309. Uncashed Travelers checks and money orders

1. Any amount held or owing by any organization other than a banking organization for the payment of a travelers check on which such organization is directly liable, sold by such organization on or after January first, nineteen hundred thirty, shall be deemed abandoned property if such amount is held or owing for payment of a travelers check which shall have been outstanding for more than fifteen years from the date of its sale.

2. Any amount held or owing by any such organization for the payment of a money order, or for the payment of any instrument drawn or issued to effect the payment thereof, sold by such organization on or after January first, nineteen hundred thirty and prior to January first, nineteen hundred fifty-eight shall be deemed abandoned property when such amount has remained unpaid to the rightful owner thereof for seven years.

3. Any amount held or owing by any such organization for the payment of such money order, or any instrument drawn or issued to effect the payment thereof, sold by such organization on or after January first, nineteen hundred fifty-eight shall be deemed abandoned property when such amount has remained unpaid to the rightful owner thereof for seven years, and either

(a) the last known address of the purchaser of such money order according to the records of such organization is located within this state and no instrument has been drawn or issued to effect the payment thereof, or

(b) such address is located within this state and an instrument has been drawn or issued to effect such payment, or

(c) such address cannot be obtained from the records of such organization and an instrument to effect such payment has been drawn or issued in this state, or

(d) such address cannot be obtained from the records of such organization and no instrument to effect such payment has been drawn or issued, or

(e) such address is located in a state not having in effect a statute under which such amount is payable to such state as unclaimed, abandoned or escheated property.

4. On or before the first day of June in each year commencing with the year nineteen hundred forty-nine every such organization shall pay to the state comptroller all property deemed abandoned pursuant to this section. Such payment shall be accompanied by a statement setting forth such information as the state comptroller may require.

5. Notwithstanding any other provision of law, the rights of a holder of a travelers check or money order to payment from any such organization shall be in no wise affected, impaired or enlarged by reason of the provisions of this section or by reason of the payment to the state comptroller of abandoned property hereunder, and any such organization which has paid to the state comptroller abandoned property held or owing for the payment of a

travelers check or money order shall, upon making payment to the person appearing to its satisfaction to be entitled thereto and upon submitting to the state comptroller proof of such payment and the identifying number of the travelers check or money order so paid, be entitled to claim reimbursement from the state comptroller of the amounts so paid, and after audit the state comptroller shall pay the same.